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Serial No. 10/001,257 filed 11/27/2001
Response dated November 2, 2006
to Office Action dated May 3, 2006

NOV 02 2006

Remarks

Receipt is acknowledged of the Office Action of May 3, 2006. Reconsideration of the application and all extensions necessary are respectfully requested. The Commissioner is hereby authorized to debit all amounts required in connection with this application from Deposit Account No. 50-1604, including, but not limited to, any fees for the extensions, the terminal disclaimers, and the Information Disclosure Statement.

Listing of Claims

A listing of claims is provided, with new dependent claims 122-127 having been added.

Please note that the independent claims use the term "opening" (with respect to an opening in the flexible material). The plain meaning of the term is intended – thus, the opening can be any hole, slit, slot, or so forth, without limitation.

In the litigation referenced in the IDS, Defendants alleged a restrictive meaning to the word "opening", asserting that the opening must have self-sealing characteristics, like a slit. No such restrictive meaning is or was intended by applicant. Rather, the term should be afforded its broadest reasonable interpretation, in accordance with standard PTO practice. See e.g., Manual of Patent Examining Procedure §2111 (during patent examination, the pending claims must be given their broadest reasonable interpretation consistent with the specification). Accordingly, the term includes any opening of any kind, without requiring any sealing characteristics or other special characteristics.

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All claims should be reviewed based on that interpretation, and such is the applicable meaning for any claim construction. No limitation is intended on the type or size of opening, or in any other manner, nor should any limitation be placed on it.

Also, it is noted that the present claims are directed to a method of providing an apparatus for a particular use. The first clause "providing a no-spill drinking cup apparatus" in the body of the independent claims can be fulfilled by providing the apparatus to wholesalers, distributors, retailers, or so forth, or by directly providing it to the user, any of which infringes the claims. The second clause refers to the fact that the apparatus is for the ultimate user to drink liquid out of, and to prevent accidental spilling of liquid by that user (in other words, it is for use as a no-spill drinking apparatus).

Terminal Disclaimer

In the Office Action, the pending claims were rejected on the grounds of non-statutory obviousness-type double patenting based on prior U.S. Patent Nos. 6,321,931 and 6,357,620. Applicant submits that the present inventions are not obvious in any manner. To obviate the double patenting rejections, terminal disclaimers are enclosed. Accordingly, reconsideration and withdrawal of the rejections is respectfully requested.

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Information Disclosure Statement

The Information Disclosure Statement (IDS) referred to in the prior Office Action is enclosed herewith. It is requested that the claims be examined in view of each of the references cited in the IDS. Several sheets of Form PTO/SB/08A are attached to the faxed copy of the present response, listing the references being provided for the Examiner's consideration. An additional copy (with copies of the references attached thereto), is being delivered to the Patent Office as well.

It is submitted that the present invention is fully patentable over all of the art of record. In view of the number of references in the IDS, counsel is available for a telephone conference or in person interview to discuss the references and facilitate examination of this application, if that would be helpful in any manner.

Favorable action on the application is respectfully requested.

Dated: November 2, 2006

Respectfully submitted,



Morris E. Cohen (Reg. No. 39,947)
1122 Coney Island Avenue, Suite 216
Brooklyn, New York 11230-2345
(718) 859-8009 (phone)
(718) 859-3044 (fax)